



File Code: 1570

Date: February 13, 2012

Edward B. Zukoski
Earthjustice
1400 Glenarm Place #300
Denver, CO 80202

Dear Mr. Zukoski:

On December 30, 2011, you filed a Notice of Appeal (NOA) on behalf of Wildearth Guardians, Defenders of Wildlife, High Country Citizen's Alliance, Rocky Mountain Wild and the Sierra Club pursuant to 36 CFR 215. You appealed the November 8, 2011 decision notice signed by Grand Mesa-Uncompahgre-Gunnison Forest Supervisor Charles Richmond, consenting to the BLM proposal modifying existing Federal Coal Lease COC-1362 by adding 800 acres and modifying existing Federal Coal Lease COC-67232 by adding 922 acres, both according to the Federal Coal Leasing Amendments Act of 1976, and prescribing stipulations needed for the protection of non-mineral resources.

Pursuant to 36 CFR 215.17 an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18 - formal review and disposition procedures. I have reviewed the appeal record, including your written NOA, the Decision Notice, Environmental Assessment (EA), and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

Appellants requested the following relief:

1. The Regional Forester must withdraw the Decision Notice and Finding of No Significant Impact providing the Forest Service's consent to the Federal Coal Lease Modifications COC-1362 & COC-67232.
2. If the Forest Service intends to consent to Federal Coal Lease Modifications COC-1362 & COC-67232 it must prepare NEPA documentation (including opportunities for public involvement and appeal) that complies fully with NEPA, the Clean Air Act, the Administrative Procedure Act, the Endangered Species Act, the National Forest Management Act, SMCRA, and the Forest Plan, and that addresses all of the issues raised in this appeal.
3. Any decision on this appeal must include a full response to each issue raised in the Statement of Reasons.



4. The Regional Forester must direct Forest Supervisor Charles S. Richmond to refrain from committing any further agency resources to implement or otherwise consent to Federal Coal Lease Modifications COC-1362 & COC-67232 unless and until the Forest Service complies with all applicable law, as described in paragraphs 1-3, above.

The Appeal Reviewing Officer, Glenn Casamassa, has found that there is insufficient evidence to show how the decision has adequately met NEPA requirements, and he recommended that the Decision Notice be reversed in whole.

APPEAL DECISION

I agree with the ARO's analysis as presented in the enclosed letter. I am reversing the Decision Notice in whole. I am directing that the Decision Notice and FONSI providing the Forest Service's consent to the lease modification be withdrawn. Since this makes other requests moot, I am denying any additional relief requested by the appellants.

My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ Brian Ferebee

BRIAN FEREBEE

Deputy Regional Forester,
Resources

cc: Mailroom R2 Grand Mesa Uncompahgre Gunnison



Forest
Service

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File Code: 1570(12-02-00-0005)

Date: February 9, 2012

Route To:

Subject: ARO Recommendation Memorandum for Appeal of Coal Lease Modifications for Mountain Coal Company, LLC

To: Brian Ferebee, Appeal Deciding Officer

I have reviewed the appeal record regarding the December 30, 2011 appeal of the decision of Forest Supervisor Charles Richmond concerning the decision consenting to Federal Coal Lease modifications COC-1362 and COC-67232 on the Grand Mesa-Uncompahre-Gunnison National Forests (GMUG) by Wildearth Guardians, Defenders of Wildlife, High Country Citizen's Alliance, Rocky Mountain Wild and the Sierra Club. My review of the appeal as submitted by eligible appellants focused on the decision documentation developed by the Forest Supervisor in reaching his decision in relation to issues raised in the appeal. Pursuant to 36 CFR §215.13(f)(2), this will constitute my written recommendation concerning the disposition of the appeal.

BACKGROUND

On November 8, 2011, Forest Supervisor Charles Richmond signed a decision notice consenting to the BLM proposal modifying existing Federal Coal Lease COC-1362 by adding 800 acres according to the Federal Coal Leasing Amendments Act of 1976 and modifying existing Federal Coal Lease COC-67232 by adding 922 acres according to the Federal Coal Leasing Amendments Act of 1976 and prescribing stipulations needed for the protection of non-mineral resources.

RELIEF REQUESTED

Appellants request the following relief:

1. The Regional Forester must withdraw the Decision Notice and Finding of No Significant Impact providing the Forest Service's consent to the Federal Coal Lease Modifications COC-1362 & COC-67232.
2. If the Forest Service intends to consent to Federal Coal Lease Modifications COC-1362 & COC-67232 it must prepare NEPA documentation (including opportunities for public involvement and appeal) that complies fully with NEPA, the Clean Air Act, the Administrative Procedure Act, the Endangered Species Act, the National Forest Management Act, SMCRA, and the Forest Plan, and that addresses all of the issues raised in this appeal.



3. Any decision on this appeal must include a full response to each issue raised in the Statement of Reasons.
4. The Regional Forester must direct Forest Supervisor Charles S. Richmond to refrain from committing any further agency resources to implement or otherwise consent to Federal Coal Lease Modifications COC-1362 & COC-67232 unless and until the Forest Service complies with all applicable law, as described in paragraphs 1-3, above.

STATEMENT OF REASONS (APPEAL ISSUES)

The appellants included eight main issues in their Statement of Reasons.

1. An Environmental Impact Statement (EIS) should have been prepared because of the impacts on a roadless area.
2. There is an inadequate range of alternatives.
3. There is an inadequate discussion of greenhouse gas (methane) mitigation.
4. There is no explanation as to why existing lease stipulations have been changed in this lease modification.
5. There was not a hard look at the proposal's air quality impacts.
6. The decision is not consistent with consultation under the Endangered Species Act.
7. The Forest Service is not authorized to consent to lease modifications under the Surface Mine Control and Reclamation Act (SMRCRA).
8. The lease modification violates the Forest Plan identification of areas unsuitable for surface coal mining.

DISCUSSION

Appeal Issue 4 argues that the Forest Supervisor changed or dropped lease stipulations for the lease modification that were in the parent lease without proper explanation or analysis. These stipulations include protections for wildlife species and avoidance of geologic hazards.

I did not find evidence in the project record as to why these stipulations were eliminated or modified. Without a reasoned basis for the changes to the lease modifications, the EA fails to meet the NEPA requirements to disclose the environmental impacts of the proposed action (40 CFR 1508.9(b)). Therefore, I concur with the Appellants on this issue.

Moreover, there is no need to review the remaining appeal issues given the above mentioned deficiency invalidates the decision.

RECOMMENDATION

Given NEPA requirements were not met, I recommend the Forest Supervisor's Decision Notice be reversed in whole.

/s/ Glenn P. Casamassa
GLENN P. CASAMASSA
Appeal Reviewing Officer